

Internal Revenue Service
memorandum

CC:INTL
Brl:WEWilliams

date: JAN 27 1988

to: District Counsel, [REDACTED]
Attn: Mr. [REDACTED]

from: Acting, Senior Technician Reviewer, Branch No. 1
Associate Chief Counsel (International) CC:INTL:1

subject: [REDACTED]

The purpose of this memorandum is to confirm the advice given to you in connection with this case by Charles Ray and Ed Williams of this office by telephone on January 25 and 26, 1988.

The advice concerned the Swiss bank account of [REDACTED] against whom the IRS has assessed I.R.C. § 6700 penalties for selling abusive tax shelters to [REDACTED] investors. [REDACTED] has been convicted by a [REDACTED] state court on various criminal charges. We understand that [REDACTED] has appealed these convictions to an intermediate appellate court and that, if affirmed, the convictions could carry a maximum prison sentence of [REDACTED] years. Both the court and the State of [REDACTED] have preliminarily indicated an overriding concern that [REDACTED] make financial restitution to the individual investors.

Largely at the instance of the State of [REDACTED], the Department of Justice requested the Swiss Central Authority to freeze [REDACTED]'s bank account and to transfer the funds in the account to the [REDACTED] court. This request was made by the Department of Justice through its Office of International Affairs (Criminal Division) (hereinafter OIA) under the U.S. - Switzerland treaty on mutual legal assistance in criminal matters. The treaty requires OIA to represent that the funds will not be utilized to pay [REDACTED]'s tax liabilities.

The IRS learned of the possibility of the funds in [REDACTED]'s Swiss account being transferred to the [REDACTED] court, and the IRS district office in [REDACTED] served a notice of levy on the [REDACTED] Attorney General's Office. OIA was advised of this filing. OIA concluded that requesting the Swiss to freeze and transfer the funds in [REDACTED]'s account to the U.S. when the Service was also seeking such funds in connection with [REDACTED]'s tax liability to the U.S. would violate the treaty. OIA indicated that to avoid a violation of the treaty under these circumstances, it would have to withdraw the request that Switzerland freeze the account and transfer the funds to the U.S.

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Meetings were held at the Department of Justice on [REDACTED] to discuss whether the IRS should withdraw its notice. OIA advised that it would withdraw the request to Switzerland on [REDACTED] unless the IRS agreed to withdraw the notice of federal tax levy, and withhold reasserting any claim to the transferred funds until after the [REDACTED] court decided whether the funds belonged to [REDACTED] or were held by [REDACTED] in constructive trust for the investors. After the court reached a decision on this question, OIA stated that the IRS could proceed directly against [REDACTED] or the investors, depending upon to whom the court awarded the funds, for any tax due by such person or persons without violating the treaty.

If the IRS did not withdraw the notice of federal tax levy and OIA withdrew its request to Switzerland, the freeze on [REDACTED]'s account would be removed. If this occurred, the investors, who are organized as a class and are represented by attorneys in the U.S. and in Switzerland, would likely file suit in the Swiss court to freeze the account and to obtain an order requiring the bank to distribute the funds to them. Such an action apparently has precedent. [REDACTED], Assistant Attorney General, [REDACTED] State, who has handled the [REDACTED] prosecution, advised that his office would encourage the investors to take such action. In addition, if the freeze were lifted by the Swiss government, then [REDACTED] might be able to gain access to the funds in the account before the investors could obtain another freeze through the Swiss courts. While the [REDACTED] court has indicated that it might give [REDACTED] a lighter sentence if he cooperates in having the funds transferred to the U.S., [REDACTED] may be more interested in retaining the \$[REDACTED] to \$[REDACTED] in the account and taking his chances on the sentence that he might receive from the court.

Messrs. Ray and Williams discussed these and other considerations with Charles Saverude of this office, and with Claire Fallon (Office of Special Litigation, Tax Division, DOJ), Richard Owens (Associate Director, OIA), and Jim Springer (Senior Counsel for International Tax Matters, Tax Division, DOJ). The consensus was that while no alternative offers the IRS as much protection as it would like, the best alternative under the circumstances is for the IRS to withdraw its notice of federal tax levy and agree not to assert another claim to the funds until the [REDACTED] court has decided who owns the funds. OIA has represented that if the IRS takes this course of action, then OIA will pursue the transfer of the funds to the [REDACTED] court under the treaty. We have concluded that it will be better for the IRS if the funds are in the U.S. where the IRS may be able to reach the funds to satisfy the federal tax liabilities of either [REDACTED] or the investors.

We discussed these conclusions with [REDACTED] of your office, and he advised that he would instruct the revenue officer to withdraw the notice of federal tax levy. Mr. Williams and I also advised Mr. Owens at OIA of the IRS's decision. It was agreed that this office will draft an agreement reflecting the understandings of this office and of OIA. The agreement will be signed by representatives of OIA and of this office. We will forward a copy of this agreement to your office as soon as it is completed and signed.

If you have any questions or if we can be of any further assistance in this matter, please call Ed Williams or me at FTS 287-4851.

CHARLES A. RAY